

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

DONALD DAWSON-DURGAN, :

Petitioner,

Case No. 1:19-cv-382

- vs -

District Judge Matthew W. McFarland  
Magistrate Judge Michael R. Merz

TIM SHOOP, Warden,  
Chillicothe Correctional Institution,

Respondent. :

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**REPORT AND RECOMMENDATIONS ON PETITIONER'S  
MOTIONS FOR LEAVE TO APPEAL *IN FORMA PAUPERIS* AND A  
CERTIFICATE OF APPEALABILITY**

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This habeas corpus case, brought *pro se* by Petitioner Donald Dawson-Durgan under 28 U.S.C. §2254, is before the Court on Petitioner's Motion for Leave to Appeal *in forma pauperis* (ECF No. 65) and Motion for a Certificate of Appealability (ECF No. 66).

At issue in the pending appeal to the Sixth Circuit are both the final judgment in the case (ECF Nos. 58 & 59) and the Court's denial of Petitioner's Motion to Amend the Judgment (ECF No. 63). As to the final judgment in the case, the Motions are moot because Judge McFarland has already denied a certificate of appealability and certified to the Court of Appeals that any appeal from the final judgment would be objectively frivolous (See Entry and Order, ECF No. 58).

Petitioner makes no separate argument for leave to appeal *in forma pauperis*, but incorporates the arguments in his Motion for Certificate of Appealability. That Motion is twenty-five pages long and essentially reargues Petitioner's Grounds for Relief, claiming this Court was in error for rejecting them. With respect, the issue on a certificate of appealability motion is

whether reasonable jurists would disagree. Repetition of an argument by a litigant does not demonstrate that a reasonable jurist would disagree with the Court's conclusions. Just repeating the words of the statute and asserting with no corroborating citations that some reasonable jurists somewhere would disagree does not make that demonstration.

The Court has already denied a certificate of appealability as to the principal judgment in the case. It should likewise deny a certificate as to denial of the Motion to Amend. The Court should likewise certify to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

July 25, 2023.

#### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #

s/ *Michael R. Merz*  
United States Magistrate Judge